UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,512	04/01/2004	Huw Edward Oliver	300203615-4	1300

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EXAMINER
HAILU, KIBROM T

ART UNIT	PAPER NUMBER
2616	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/815,512	OLIVER ET AL.
	Examiner	Art Unit	
	Kibrom T. Hailu	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _01 April 2004_.

2a) ☐ This action is **FINAL.**   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-17_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-17_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on _01 April 2004_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☒ All   b) ☐ Some * c) ☐ None of:

      1. ☒ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2.   Claim 16 IS rejected under 35 U.S.C. 101 because the claim is directed to non-statutory subject matter.

The claim is not statutory because the applicant claims, "a data storage media comprising program data ... said program data comprising instructions", which is not tangible. That is, the claim doesn't require any physical transformation and/or is not being executed by a computer. Therefore, the invention as claimed does not produce, useful, concrete, and tangible result [see MPEP 2106.01].

Double Patenting

3.   A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

4.   Claims 1-17 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-17 of copending Application No. 10/815511. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

5.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6.   Claims 1-3, 5-7, and 10-17 are rejected under 35 U.S.C. 102(e) as being anticipated by

Pabla et al. (US 7,127,613 B2).

Regarding claim 1, Pabla discloses a method for controlling a computer entity to

participate in a peer to peer network of a plurality of computer entities (col. 13, lines 6-12), said

method comprising: for each computer entity (see Fig. 1B): operating a peer to peer protocol for

enabling said computer entity to utilise resources of at least one other said computer entity of

said network, and for enabling at least one other said computer entity of said network to utilise

resources of said computer entity (col. 13, lines 17-23; col. 19, lines 32-39; col. 20, lines 33-43

etc..); and said computer entity automatically operating a process for managing at least one other

computer entity in said network (col. 1, lines 32-34, ... any of the peer device 104 may serve as a

client of or a server to any of the other devices), whenever said computer entity takes part in said

peer to peer network using said peer to peer protocol (Fig. 13; col. 18, lines 17-32 in combination

with col. 20, lines 44-63 and lines 33-43, illustrates by means a vote, automatically, a peer

represents to manage the other computers. Also each of the peers has its own content

management services 222 to manage and facilitate content sharing using the peer group sharing

protocol e.g. see co. 21, lines 13-16).

Regarding **claim 2**, Pabla discloses said process of managing at least one other computer

entity in said network comprises: determining at least one policy by which said computer entity

will interact with said at least one other computer entity (col. 13, lines 9-12, 51-66; col. 21, lines

56-57).

Regarding **claim 3**, Pabla discloses said process of managing at least one other computer

entity comprises: adopting a policy towards said at least one other computer entity (col. 13, lines

55-57), said policy selected from a set of pre-determined polices for determining a relationship

between said computer entity and said at least one other computer entity (col. 17, lines 44-63;

col. 18, lines 17-18; col. 19, lines 15-20; col. 20, lines 39-43; col. 23, lines 59-col. 24, line 2 ...

etc.).

Regarding **claim 5**, Pabla discloses a method of managing a network comprising a

plurality of peer to peer computers, said method comprising; at each said computer entity (Fig.

1B); determining locally (col. 19, lines 1-4, "...formed based upon proximity of one peer to

another peer..." and col. 19, lines 38-39) at said computer entity a local policy for management

of at least one target computer entity comprising said network (col. 18, lines 17-39; col. 21, lines

13-15); receiving a plurality of local policy messages from a plurality of computer entities

comprising said network (Fig. 10; col. 17, lines 29-31), each said local policy message

describing a local policy applied at a corresponding respective said computer entity to said target

computer entity (col. 17, lines 23-39; col. 18, lines 55-59), and determining from said plurality of

received local policy data, and from said locally generated local policy, a network management

policy to be applied to said target computer entity by said local computer entity (Fig. 13; col. 21,

lines 13-16; col. 24, lines 15-23) .

Regarding claim 6, Pabla discloses broadcasting said network policy to a plurality of

peer computers within said network (col. 17, line 23-31, 41-44; col. 20, lines 33-35).

Regarding claim 7, Pabla discloses monitoring said at least one target computer entity

(Fig. 9; col. 13, lines 6-13); and depending upon a result of said monitoring, adopting a pre-

determined policy from a stored set of policies, and applying said policy to said at least one

target computer entity (col. 13, lines 51-57).

Regarding claim 10, Pabla discloses said step of determining a network management

policy comprises: applying a voting protocol for adopting a common policy amongst a plurality

of said computer entities (col. 18, lines 17-32).

Regarding claim 11, Pabla discloses a peer to peer networking component for allowing

said computer entity to engage other computer entities on a peer to peer basis (col. 12, lines 36-

67; col. 20, lines 33-43; col. 25, lines 44-52; col. 15, lines 16-19); and a network management

component for enabling a said computer entity to participate in management of a peer to peer

network (Fig. 13; col. 20, lines 58-63), wherein said network management component is

configured to operate whenever said peer to peer networking component operates to allow said

computer entity to take part in said peer to peer network (Fig. 13; col. 21, lines 13-16; col. 19,

lines 32-39;).

Regarding claim 12, Pabla discloses said management component is activated whenever

said peer to peer network component is operational (col. 17, lines 54-63; col. 18, lines 60-67; col.

23, lines 24-31).

Regarding claim 13, Pabla discloses said network management component comprises a

program data which controls said resources to perform a network management service (col. 14,

lines 44-57; col. 12, lines 55-67; col. 15, lines 58-60; col. 22, lines 56-59; col. 17, lines 29-31 in combination with lines 39-44 and col. 19, lines 32-39).

Regarding claim 14, Pabla discloses said network management component operates to apply at least one policy for determining a mode of operation of said computer entity in relation to at least one other said computer entity of said network (col. 13, lines 9-12; 51-66; col. 17, lines 29-31).

Regarding claim 15, Pabla discloses said network management component operates to: communicate with a plurality of other computer entities of said network for sending and receiving policy data concerning an operational policy towards a target computer entity (Figs. 1B and 10; col. 15, lines 50-57; col. 13, lines 51-57; col. 16, lines 61-62; col. 17, lines 29-34 in combination with col. 54-56) and determine, from a consideration of policy data received from said other computer entities, a global policy to be adopted by each computer entity in said network, towards a said target computer entity (col. 13, lines 55-57; col. 18, lines 26-39).

Regarding claim 16, Pabla discloses a data storage media comprising program data for controlling a computer entity to participate in a peer to peer network (col. 12, lines 36-67; col. 13, lines 6-12; col. 14, lines 44-51), said program data comprising instructions (claim 56) for: operating a peer to peer protocol for enabling said computer entity to utilise resources of at least one other computer entity of said network, and for enabling at least one other said computer entity of said network to utilise resources of said computer entity (col. 13, lines 17-23; col. 19, lines 32-39; col. 20, lines 33-43 etc..); and automatically operating a process for managing at least one other computer entity of said network (col. 1, lines 32-34, ... any of the peer device 104 may serve as a client of or a server to any of the other devices) whenever said computer entity

takes part in said peer to peer network using said peer to peer protocol (Fig. 13; col. 18, lines 17-32 in combination with col. 20, lines 44-63 and lines 33-43, illustrates by means a vote, automatically, a peer represents to manage the other computers. Also each of the peers has its own content management services 222 to manage and facilitate content sharing using the peer group sharing protocol e.g. see co. 21, lines 13-16).

Regarding claim 17, Pabla discloses a method for controlling a computer entity to participate in a peer to peer network of a plurality of computer entities (col. 18, lines 27-32, illustrates a peer is vote to represent and control other peers), said method comprising: for each computer entity (see Figs. 1B and 10): operating a peer to peer protocol for enabling said computer entity to utilise resources of at least one other said computer entity of said network, and for enabling at least one other said computer entity of said network to utilise resources of said computer entity (col. 13, lines 17-23; col. 19, lines 32-39; col. 20, lines 33-43 etc..); and managing at least one other computer entity in said network (Fig. 13; col. 20, lines 58-63; col. 21, lines 13-16).

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8.   The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over unpatentable over

Pabla in view of Gleichauf (US 7,137,145 B2).

Regarding claim 9, Pabla discloses applying a monitoring operation to said target

computer entity (col. 13, lines 6-12), said monitoring operation selected from the set: a

monitoring operation for observing a group behavior of a group of target computer entities

within said network (col. 17, lines 29-37; col. 12, lines 55-67); a monitoring operation for

detecting a security breach in said network (col. 13, lines 9-14; col. 26, lines 24-28; col. 19, line

66-col. 20, line 10; col. 25, line 61-col. 26, line 3); a monitoring operation for detecting a

performance problem of said at least one target computer (col. 18, lines 43-50; col. 22, lines 17-

31).

Pabla doesn't disclose a monitoring operation for remote virus scanning of said target

computer.

Gleichauf teaches a monitoring operation for remote virus scanning of said target

computer (col. 3, lines 39-42; col. 9, lines 25-28).

Therefore, it would have been obvious to one ordinary skill in the art at the time the

invention was made to provide the method of detecting or monitoring and/or scanning virus of

the remote computer 18 by one or more of the computers 16a, 16b and 16c as taught by

Gleichauf into the peer-to-peer network of Pabla so that hackers, which could cause damage to

the network, would be prevented from penetrating the network undetected.

10.   Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over

unpatentable over Pabla in view of Gleichauf, and further in view of Golle (Incentives for

Sharing in Peer-to-Peer Networks, 2001, Computer Science Department, Stanford University).

Regarding claim 4, Pabla discloses managing at least one other computer entity in said

network (Fig. 13; col. 18, lines 17-32 in combination with col. 20, lines 44-63 and lines 33-43;

co. 21, lines 13-16) comprises a process selected from set: controlling access by said at least one

computer entity to a communal resources stored on said computer entity (col. 13, lines 9-14; col.

19, line 66-col. 20, line 2; col. 15, lines 42-44; col. 18, lines 55-59);

Pabla doesn't explicitly disclose placing said at least one other computer entity in

quarantine; or applying a charge for utilisation by said at least one other computer entity of a

communal resource.

Gleichauf teaches placing said at least one other computer entity in quarantine (col. 3,

line 63-col. 4, line 11; col. 2, lines 5-10). However, Gleichauf doesn't teach applying a charge

for utilisation by said at least one other computer entity of a communal resource.

Golle teaches applying a charge for utilisation by said at least one other computer entity

of a communal resource (page 5, lines 36-38, page 1, lines 25-34).

Therefore, it would have been obvious to one ordinary skill in the art at the time the

invention was made to use the method of placing an infected computer in quarantine and

charging a peer or user for using a resource as taught by Gleichauf and Golle, respectively into

the peer-to-peer network of Pabla in order to prevent those hackers, which could cause damage,

from penetrating a network undetected, and to increase the system's value to its users and so

make it more competitive with other commercial P2P systems.

Regarding claim 8, Pabla discloses a said policy comprises a policy selected from the set (col. 21, line 57): a policy for control of access by said target computer entity to a communal resource (col. 13, lines 9-14; col. 19, line 66-col. 20, line 2; col. 15, lines 42-44; col. 18, lines 55-59).

Pabla doesn't disclose a policy for determining whether or not to place a faulty computer entity into quarantine; a policy for generating a virus alert message for alerting other computer entities in the network that a said target computer entity has a virus; a policy for generating a fault alert message for alerting other computer entities in the network that said target computer entity is faulty; a policy determining whether to exclude said target computer entity from accessing a particular type of resource; a policy for determining whether to exclude said target computer entity from the network; a charging policy for charging said target computer entity for accessing a resource.

Gleichauf teaches a policy for determining whether or not to place a faulty computer entity into quarantine (col. 3, line 63-col. 4, line 11; col. 12, lines 44-59; col. 2, lines 5-10, note that a compute can be defected or faulty due to virus infection); a policy for generating a virus alert message for alerting other computer entities in the network that a said target computer entity has a virus; a policy for generating a fault alert message for alerting other computer entities in the network that said target computer entity is faulty (col. 2, lines 14-24, 27-36; col. 6, lines 57-62; col. 13, lines 32-35); a policy determining whether to exclude said target computer entity from accessing a particular type of resource (col. 13, lines 26-35); a policy for determining whether to exclude said target computer entity from the network (col. 2, lines 25-28; col. 1, lines 49-51, 60-62; col. 1, line 64-col. 2, line 5; col. 3, lines 54-57; ... etc.).

Gleichauf doesn't disclose a charging policy for charging said target computer entity for accessing a resource.

Golle teaches a charging policy for charging said target computer entity for accessing a resource (page 5, lines 36-38, page 1, lines 25-34).

Therefore, it would have been obvious to one ordinary skill in the art at the time the invention was made to use the method of policies for quarantining a computer, for generating a virus or fault, exclude the computer and charging a peer or user for using a resource as taught by Gleichauf and Golle into the peer-to-peer network of Pabla in order to prevent those hackers, which could cause damage, from penetrating a network undetected, and to increase the system's value to its users and so make it more competitive with other commercial P2P systems.

Conclusion

11.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kibrom T. Hailu whose telephone number is (571)270-1209. The examiner can normally be reached on Monday-Thursday 8:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on (571)272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kibrom Hailu

KH

07/16/07

RICKY Q. NGO
SUPERVISORY PATENT EXAMINER